

BEFORE THE  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT  
DECISION NO. 4924 AS A PRECEDENT  
DECISION PURSUANT TO SECTION  
409 OF THE UNEMPLOYMENT  
INSURANCE CODE.

In the Matter of:

ROSE H. BENNETT  
S.S.A. No.

PRECEDENT  
BENEFIT DECISION  
No. P-B-179

FORMERLY BENEFIT DECISION No. 4924
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The above-named claimant on February 26, 1948, appealed from the decision of a Referee (S-5714) which held that the claimant was not available for work as required by Section 57(c) of the Unemployment Insurance Act now section 1253(c) of the Unemployment Insurance Code<sup>7</sup>.

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

Claimant was last employed as a salesclerk for a department store in Sacramento, at a salary of \$28.00 per week, plus commissions and bonuses. She voluntarily left this employment on October 29, 1947, for reasons herein-after stated.

On January 27, 1948, the claimant registered for work and filed a claim for benefits at the Susanville office of the Department of Employment. The employer protested and a determination was issued disqualifying the claimant from benefits indefinitely on the ground that she was not able and available for work within the meaning of Section 57(c) of the Act. The claimant appealed to a Referee who affirmed the determination. This appeal was filed thereafter.

The claimant's husband became unemployed in August, 1947, when he suffered a heart attack. His doctor advised that he move to a higher altitude but he did not actually do so until November 8, 1947, after he and the claimant were evicted from their living quarters in Sacramento. It was this pending move which caused the claimant voluntarily to terminate her employment in Sacramento.

The claimant's permanent home had been in Susanville all of her life until the war. She and her husband left there at that time when he became employed in war work in the Sacramento area. The claimant has had previous sales experience over a period of more than twenty years, most of it in Susanville. She operated her own grocery store there for several years, and also worked as a dry goods salesclerk and as a corsetiere.

Following her return to Susanville, the claimant applied for work at several retail establishments, five of which were mentioned by name at the hearing before the Referee. At one of these establishments, she had a promise of work upon completion of a move to new quarters. Subsequent to the hearing such employment materialized.

Although the town of Susanville is not large, it serves as a trading area for a population of approximately 7,500 which resides within a radius of seven or eight miles of the town. Numerous work opportunities in the retail trade field exist in the area on a year-round basis. The 1947 Christmas season was unusual in that the usual number of extra help were not employed. There was a temporary reduction in the number of retail establishments due to a fire.

#### REASON FOR DECISION

In many prior decisions, this Appeals Board has held that when a claimant leaves a metropolitan area where work opportunities are plentiful and moves to a small town or a rural community where such opportunities are non-existent or are extremely limited, the claimant has in effect removed himself from the labor market and made himself unavailable for work within the meaning of Section 57(c) of the Act /now section 1253(c) of the Unemployment Insurance Code/. However, when the move to a smaller community leaves the claimant in a labor market where there is a reasonable potential demand for his services, such move cannot be

said to have taken the claimant out of the labor market. In our opinion, such is the case here. The claimant's move was to an area where there were many retail establishments. Her experience and qualifications, plus the fact that she had worked in this area for many years, a few years previous to the time involved in the appeal, indicate clearly that she remained in a labor market and was available for work within the meaning of Section 57(c) of the Act.

#### DECISION

The decision of the Referee is reversed. Benefits are allowed provided the claimant is otherwise eligible.

Sacramento, California, January 6, 1976

#### CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

HARRY K. GRAFE

DISSENTING OPINION

I dissent for the reasons set forth in my dissenting opinion in Appeals Board Decision No. P-B-168, except for the last three paragraphs thereof.

Moreover, the instant case states on its face that the decision is "Based on the record before us," whereas there is absolutely no record before us. The records of all the Benefit Decisions were irrevocably destroyed several years ago. Thus, no record in this case was seen, let alone reviewed, by any member of this Board.

In addition, as in Appeals Board Decision No. P-B-177 (Benefit Decision No. 4473), today it is unlikely that the issue of the claimant's availability for work under section 1253(c) would be reached, as the claimant would not qualify for benefits by reason of the provisions of section 1264, which was added to the Unemployment Insurance Code in 1953.

HARRY K. GRAFE